



## Office of the Attorney General

State of Texas  
November 21, 1996

DAN MORALES  
ATTORNEY GENERAL

Mr. Mitchell S. Milby  
Assistant City Attorney  
Criminal Law and Police Division  
City of Dallas  
City Hall  
Dallas, Texas 75201

OR96-2176

Dear Mr. Milby:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101817.

The City of Dallas Police Department (the "department"), which your office represents, received the following request for information:

[R]equesting information of Internal Affairs complaint against Sgt. Harold Richard Andrews Badge 4212, for presentation to Citizens Review Board.

You claim that the requested information is excepted from disclosure under section 552.101, 552.102(a), and 552.108 of the Government Code. You have submitted information which you contend is responsive to the request.<sup>1</sup> We have considered the exceptions you raised and have reviewed the documents at issue.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. The requested records contain information that is confidential and excepted from disclosure under section 552.101, in conjunction with section 5.08(b) of the Medical Practice Act (the "MPA") V.T.C.S. art. 4495b. Section 5.08(b) of the MPA provides as follows:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

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<sup>1</sup>We note that the failure or refusal to provide access to or copying of public information is a criminal offense under chapter 552 of the Government Code. See Gov't Code § 552.353.

Therefore, the medical records may be released only in accordance with the MPA. Open Records Decision No. 598 (1991). See V.T.C.S. art. 4495b, § 5.08(c), (j).

We will next address the privacy arguments you raise on behalf of the officer, about whom the request for information concerns. Section 552.101 encompasses both common-law and constitutional privacy.<sup>2</sup> Under common-law privacy, private facts about an individual are excepted from disclosure. *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). For information to be protected from public disclosure under the common-law right of privacy, the information must meet the criteria set out in *Industrial Foundation*. Information must be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 (1992) at 1.

You have submitted a social study report prepared by the Family Court Services office and assert that the report is protected by privacy interests. This report appears to be a court document which the requestor has a right to as a party to the custody proceeding. Additionally, we note that, even if the report could be withheld from the public, the requestor has a special right of access to the documents concerning her under section 552.023 of the Government Code.<sup>3</sup> Furthermore, the department has not indicated and we are not aware of any statute that would make the submitted information confidential. Therefore, the department may not withhold any of the submitted report under common-law or constitutional privacy, in conjunction with section 552.101 of the Government Code. Consequently, the department must release the requested information to the requestor.

You also claim that section 552.102(a) excepts some of the requested information from disclosure. Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." In *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy, as incorporated by section 552.101 of the Act.

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<sup>2</sup>Constitutional privacy consists of two interrelated types of privacy: (1) the right to make certain kinds of decisions independently and (2) an individual's interest in avoiding disclosure of personal matters. Open Records Decision No. 455 (1987) at 4. The scope of information protected under constitutional privacy is narrower than that under the common-law doctrine of privacy; the information must concern the "most intimate aspects of human affairs." *Id.* at 5 (citing *Ramie v. City of Hedwig Village, Texas*, 765 F.2d 490 (5th Cir. 1985)).

<sup>3</sup>Section 552.023 grants an individual or an individual's representative access to information that is otherwise excepted from required public disclosure based on a law that protects that individual's privacy interests. See Open Records Decision No. 587 (1991). Therefore, you may not withhold information under section 552.101 on the basis of protecting a requestor's own common-law privacy interests. Open Records Decision No. 481 (1987) at 4.

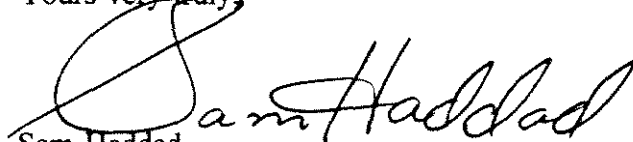
You claim that the "records titled 'Internal Affairs Division Officer's Resume' are personnel information that is exempt from public disclosure under Section 552.102(a)." However, in reviewing the submitted information we did not find any such titled or type of record. Therefore, without this information we are unable to determine whether such information may be withheld pursuant to section 552.102 or any other claimed exception. Moreover, as we have determined above that the officer's privacy rights are not implicated by the release of the information to the requestor, section 552.102 is inapplicable.

We finally consider your assertion that section 552.108 allows you to withhold some of the submitted information. Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime," and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; see *Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). You assert that the requested information relates to pending investigations and prosecution of criminal allegations. Since the records at issue come within the purview of section 552.108, we conclude that most of the information at issue may be withheld under this section.

We note, however, that information normally found on the front page of an offense report is generally considered public.<sup>4</sup> *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ ref'd n.r.e. per curiam, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, the department must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the report. Therefore, except for front page offense report information, section 552.108 of the Government Code excepts the requested record from required public disclosure. Although section 552.108 authorizes the department to withhold the remaining information from disclosure, the department may choose to release all or part of the information at issue that is not otherwise confidential by law. See Gov't Code § 552.007.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

  
Sam Haddad  
Assistant Attorney General  
Open Records Division

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<sup>4</sup>The content of the information determines whether it must be released in compliance with *Houston Chronicle*, not its literal location on the first page of an offense report. Open Records Decision No. 127 (1976) contains a summary of the types of information deemed public by *Houston Chronicle*. For your convenience, we have attached a list of the types of information the department must release from the submitted record.

SH/ch

Ref.: ID# 101817

Enclosures: Submitted documents  
Summary of Open Records Decision No. 127 (1976)

cc: Ms. Linda Andrews  
1206 Gloucester  
Garland, Texas 75040  
(w/ Summary of Open Records Decision No. 127 (1976))